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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.202
of the Commission's Rules
Table of Allotments
For FM Broadcast Stations
(Arcadia, Fallbrook, Yucca Valley, and
Desert Hot Springs, California)

RM No. _____

MM Docket No. _____

To: Chief, Allocations Branch

PETITION FOR RULEMAKING

Big City Radio-LA, L.L.C., licensee of KLYY(FM), Channel 296A, Arcadia, California, and KSYY(FM), Channel 296A, Fallbrook, California, by its attorneys and with the consent of Morris Communications Corporation, the licensee of KYOR(FM), Channel 295B, Yucca Valley, California, hereby respectfully petitions the Commission for the following modifications of the Commission's Table of Allotments for FM Broadcast Stations (Section 73.202 of the Commission's Rules) (the "Proposal"):

- (a) replace Channel 296A, Arcadia, California, with Channel 296B1;
- (b) replace Channel 296A, Fallbrook, California, with Channel 281A;
- (c) delete Channel 295B for Yucca Valley, California;
- (d) add Channel 295B1 for Desert Hot Springs, California;

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- (e) modify the license of KLYY(FM) to specify operations on Channel 296B1 in lieu of operation on Channel 296A;
- (f) modify the license of KSYF(FM) to specify operations on Channel 281A in lieu of operation on Channel 296A; and
- (g) modify the license of KYOR(FM) to specify operations on Channel 295B1 in Desert Hot Springs, California, in lieu of operation on Channel 295B in Yucca Valley, California.

Grant of the Proposal would provide first local aural transmission service to Desert Hot Springs, California, a census designated and independent community of 11,668 persons, according to the 1990 Census. 1/ Desert Hot Springs, which is not part of any Urbanized Area, clearly merits its own transmission station, pursuant to the Commission's allotment priorities. 2/ The community of Desert Hot Springs has its own mayor and city council (including its own building, finance, planning and public works departments), six schools (including a brand-new high school) and its own library branch, more than a dozen churches, its own health clinics and urgent care center, a wide selection of hotels and restaurants, and other retail and community outlets. 3/

Moreover, the Proposal would not deprive any current community of license of its sole local transmission service. Arcadia and Fallbrook would retain

1/ See *1990 Census of Population & Housing, California*, at 35.

2/ See *id.* at G-42. Also, the service area of the Desert Hot Springs allotment, as proposed, would include less than 50 percent of the closest urbanized area. See Technical Statement at 8.

3/ See, e.g., <http://deserthotsprings.org>, which is the official public web site for the community. See also <http://yp.yahoo.com> (location: Desert Hot Springs, CA) (demonstrating the number of organizations and entities located in the community.)

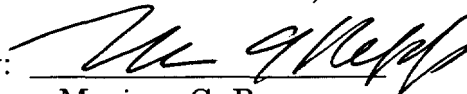
their current radio stations, Desert Hot Springs will gain a new local aural transmission service, and Yucca Valley will continued to be served by the full-time radio station KYVU(AM), 1420 kHz, Yucca Valley.

The attached Technical Statement demonstrates that the Proposal is consistent with the Commission's technical rules and precedent, and that the Proposal will result in the reduction of certain existing short spacings. Statements from Big City Radio-LA, L.L.C. and Morris Communications Corporation affirming that they will apply for the revised allotments if changed as proposed also are attached.

Accordingly, the Commission should grant the Petition, issue an appropriate Notice of Proposed Rule Making, and approve the proposed modifications under Section 1.420(i) of the Commission's Rules and related Commission precedent, as described in the Technical Statement.

Respectfully submitted,

BIG CITY RADIO-LA, L.L.C.

By: 
Marissa G. Repp
F. William LeBeau

HOGAN & HARTSON L.L.P.
555 13th Street, N.W.
Washington, DC 20004-1109
(202) 637-5600

Its Attorneys


May 26, 2000

DECLARATION

I, Charles M. Fernandez declare as follows:

1. I am President and Chief Executive Officer of Big City Radio, Inc., the Member Manager of Big City Radio-LA, L.L.C. ("Big City Radio-LA"), the licensee of KLYY(FM), Channel 296A, Arcadia, California, and KSYY(FM), Channel 296A, Fallbrook, California (the "Stations").
2. Big City Radio-LA intend to apply for construction permits for the Stations upon adoption of the Proposed Rule Making to implement facilities authorized by the Rule Making.
3. If awarded the construction permits for the Stations, Big City Radio-LA promptly will construct and operate such facilities.

I hereby declare under penalty of perjury that the statements made in this declaration are true and accurate to the best of my knowledge, information and belief.



Charles M. Fernandez

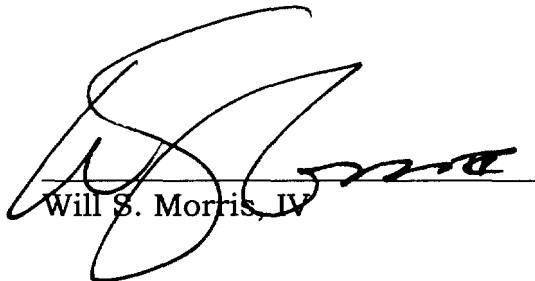
Date: May 25, 2000

DECLARATION

I, Will S. Morris, IV, declare as follows:

1. I am President of Morris Communications Corporation, the licensee of KYOR(FM), Channel 295B, Yucca Valley, California.
2. Morris Communications Corporation hereby consents to the filing of the foregoing petition for rule making (the "Proposed Rule Making") by Big City Radio-LA, L.L.C.
3. Morris Communications Corporation intends to apply for a construction permit for KYOR(FM) at Desert Hot Springs, Channel 295B1, upon adoption of the Proposed Rule Making.
4. If awarded the construction permit for KYOR(FM) at Desert Hot Springs, Channel 295B1, Morris Communications Corporation promptly will construct and operate such facilities.

I hereby declare under penalty of perjury that the statements made in this declaration are true and accurate to the best of my knowledge, information and belief.



Will S. Morris, IV

Date: May 25, 2000

TECHNICAL STATEMENT

CARL T. JONES
CORPORATION

**STATEMENT OF WILLIAM J. GETZ
IN SUPPORT OF A PETITION TO AMEND
THE FM TABLE OF ALLOTMENTS**

I am a Radio Engineer, an employee in the firm of Carl T. Jones Corporation with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by Big City Radio-LA, L.L.C., licensee of KLYY(FM), Arcadia, California, and KSYY(FM), Fallbrook, California, to prepare this statement in support of a Petition to Amend the FM Table of Allotments, Section 73.202(b) of the FCC Rules. The petitioner requests that Section 73.202(b) of the FCC Rules be modified in the following manner:

	<u>Present</u>	<u>Proposed</u>
Arcadia, California	296A	296B1
Fallbrook, California	296A	281A
Yucca Valley, California	295B	-----
Desert Hot Springs, California	-----	295B1

In accordance with the requested modifications to the FM Table of Allotments, the Petitioner requests that the licenses of stations KLYY(FM), KSYY(FM) and KYOR(FM) be

STATEMENT OF WILLIAM J. GETZ
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modified to specify operation on channels 296B1 at Arcadia, 281A at Fallbrook and 295B1 at Desert Hot Springs, respectively.

ALLOCATION CONSIDERATIONS

Channel 296B1, Arcadia, California, in lieu of Channel 296A, Arcadia, California

An engineering study of all pertinent allotments, assignments and applications revealed that Channel 296B1 can be allotted to Arcadia, California, with a site restriction 23 km east. The allotment reference coordinates for Channel 296B1 at Arcadia, California, are 34° 04' 18" N.L. and 117° 48' 46" W.L. An existing tower (FCC Tower Registration Number 1015932) is located at the Arcadia reference coordinates.

From this existing 35 meter above ground level (AGL) tower KLYY(FM) would be able achieve an antenna height AGL of 32 meters and a radiation centerline height of 410 meters above mean sea level with no change in the authorized overall height of the existing tower. The resulting antenna Height Above Average Terrain (HAAT) is 91 meters. With this antenna height, the Class B1 reference facility would be permitted the maximum Class B1 ERP of 25 kW.

Exhibit 1 shows the predicted 70 dBu contour using actual terrain and the standard F(50,50) signal propagation methodology.¹ Exhibit 1 also shows the maximum Class B1

¹ The average terrain data from 3.2 kilometers to 16.1 kilometers from the reference site was determined using the National Geophysical Data Center Thirty Second Point Database (TGP-0050), as prescribed in Section 73.312(d) of the Rules. Exhibit 5 is a full showing as to the terrain toward Arcadia and the predicted distances to the reference Class B1 70 dBu city-grade contour.

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city-grade circle (radius = 23.2 km) using uniform terrain. The city-grade circle encompasses 80% of Arcadia, while the city-grade contour encompasses all of Arcadia. Because this is an existing site and the petitioner has reasonable assurance of the availability of the FAA-approved existing tower site, use of actual terrain in demonstrating city-grade service compliance is appropriate in this instance (See Woodstock and Broadway, Virginia, 3 FCC Rcd 6398 (1988)).

In addition to satisfying the applicable city-grade service requirements, the proposed Channel 296B1 in Arcadia, California, also satisfies allocation spacing considerations. The proposed Channel 296B1 reference site improves on longstanding, grandfathered short-spacings with respect to second-adjacent channel stations KROQ-FM, Los Angeles, California, [Channel 294B] and KLVE(FM), Los Angeles, California [Channel 298B]. With respect to KROQ-FM, the existing 47.6 kilometer short-spacing is reduced to 27.6 km. Similarly, with respect to KLVE(FM), the existing 62.5 kilometer short-spacing is reduced to 41.8 km. Because the existing grandfathered short-spacings would be improved as a result of the proposed arrangement of allotments, and because the subsequent KLYY Class B1 application for construction permit will automatically satisfy 73.213 protection requirements to both KLVE(FM) and KROQ-FM (because Section 73.213 no longer requires protection of second-adjacent channel related grandfathered short-spaced stations) the instant proposal satisfies allotment standards with respect to both KLVE(FM) and KROQ-FM. This follows Allocations Branch precedent in evaluating

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the proposed relocation of grandfathered short-spaced stations. In 1995, the Allocations Branch considered an analogous case and adopted a proposed site change for a grandfathered short-spaced station because: (1) the proposal increased the distance between short-spaced stations; and (2) it would presumptively be in compliance with Section 73.213 at the application stage.²

The proposed Arcadia, Channel 296B1, reference coordinates are also short-spaced to the KVYY(FM), Ventura, California, licensed transmitter site (FCC File No. BLH-940418KF). However, the reference site is fully-spaced to the transmitter site authorized in the outstanding KVYY(FM) Construction Permit (FCC File No. BPH-19991213ABJ, granted 3/13/00). Consequently, consistent with Allocations Branch precedent, the proposed allotment reference site satisfies allocation considerations with respect to KVYY(FM).³

Because the proposed KLYY(FM) Channel 296B1 allocation reference site is within 320 kilometers of the common border between Mexico and the United States of America, the proposal must satisfy the terms and conditions of the *Agreement Between the Government of the United States of America and the Government of the United Mexican States relating to the FM Broadcasting Service in the Band 88-108 MHz* ("Mexican

² See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (East Los Angeles, Long Beach, and Frazier Park, California), Report and Order, MM Docket No. 90-44, paragraph 15, 50 FR 15255 (1995).

³ See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Sibley, Iowa, and Brandon, South Dakota), Report and Order, MM Docket No. 96-66, paragraph 4, 63 FR 64876 (1998).

Agreement"). The Arcadia reference site satisfies the minimum distance separation requirements contained in Appendix A, Table 2, of the Agreement, with respect to all Mexican assignments, applications and allotments. The Arcadia, California, Channel 296 allotment was accepted by Mexico as a Class B1 FM allotment on June 26, 1997.

The proposed Arcadia, California, Channel 296B1 reference site satisfies the minimum distance spacing requirements contained in Section 73.207 of the FCC Rules with all other pertinent allocations, assignments and applications with the exception of Channel 296A at Fallbrook, CA, and Channel 295B at Yucca Valley, California. To accommodate the proposed upgrade at Arcadia, the Petitioner requests the following consensual changes at Fallbrook and Yucca Valley.⁴

Channel 281A, Fallbrook, California, in lieu of Channel 296A, Fallbrook, California

To accommodate the upgrade at Arcadia, California, the proponent requests a channel change and relocation for KSYY(FM), Fallbrook, California. Radio station KSYY(FM) currently operates on channel 296A. The proponent requests channel 281A in lieu of channel 296A at Fallbrook, California. The allocation reference coordinates for Channel 281A are 33° 27' 30" N.L. and 117° 13' 26" W.L. The Fallbrook allotment

⁴ As demonstrated elsewhere in this Petition, the licensee of KYOR(FM), Yucca Valley, CA (Channel 295B) supports the proposed arrangement of allotments. In addition to being the licensee of KLYY(FM), Arcadia, California, (Channel 296A) the Petitioner is also the licensee of KSYY(FM), Fallbrook, California (Channel 296A).

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reference site meets the allotment standards, the minimum spacing requirements of §73.207 and the city-grade coverage requirements of §73.315 of the FCC Rules.

Because the proposed KSYY(FM) Channel 281A allocation reference site is within 320 kilometers of the common border between Mexico and the United States of America, the proposal must satisfy the terms and conditions of the Mexican Agreement. The allocation reference site for the proposed channel 281A at Fallbrook, California, is 33.3 kilometers short-spaced to the 226 km minimum distance spacing requirement to cochannel Mexican assignment, XHBA-FM, Mexicali, BN [Channel 281C]. As shown in Exhibit 2, contour protection in accordance with the terms and conditions of the Mexican Agreement is afforded to a maximum Class C circle (92 kilometer radius) at the XHBA-FM notified coordinates. Because contour protection in accordance with the Mexican Agreement is afforded to XHBA-FM, referral of the proposed Channel 281 A to the Mexican Government is not necessary.⁵

Although the Petitioner requests a non-adjacent channel substitution for Fallbrook, California, as discussed below, the proposed Channel 281A should not be subject to competing expressions of interest. This is because the use of the requested higher class channel (296B1 at Arcadia) is incompatible with the use of the existing Channel 296A at Fallbrook.

⁵ See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Nogales and Vail, Arizona), *Notice of Proposed Rulemaking*, MM Docket No. 00-31, paragraph 4, Adopted February 16, 2000, Released February 25, 2000.

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In adopting the rules for upgrading FM stations the Commission indicated that, in addition to not considering competing expressions of interest to upgrade on adjacent channels, it also would not consider competing expressions of interest where use of the requested higher class channel is incompatible with the use of an existing channel.⁶

It is submitted that competing expressions of interest for Channel 281A at Fallbrook, California should not be entertained because: Channel 296 is the only available channel for the proposed upgrade at Arcadia; the upgrade at Arcadia requires KSYF(FM), Fallbrook, California, to vacate Channel 296A; and, the only channel KSYF can move to is Channel 281A.

In light of the above, the proposed Fallbrook allotment reference site meets the applicable allotment standards and city-grade coverage requirements.

Channel 295B1, Desert Hot Springs, California, in lieu of Channel 295B, Yucca Valley, California

The proposed arrangement of allotments will allow KYOR(FM), Yucca Valley, California, [Channel 295B] to downgrade and relocate in order to provide a first local service to Desert Hot Springs, California [population 11,668 persons]. Full service

⁶ See Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels, 60 RR 2d 114, 120 (1986). See Also, Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Beverly Hills, Chiefland, Holiday, Micanopy, and Sarasota, Florida), Memorandum Opinion and Order, MM Docket No. 92-195, at footnote 1, Adopted February 7, 2000, Released February 14, 2000.

commercial radio station KYVU(AM) will continue to provide full-time local service on 1420 kHz to Yucca Valley, California.

An engineering study of all pertinent allotments, assignments and applications revealed that Channel 295B1 can be allotted to Desert Hot Springs, California, with no site restriction. However, the proponent chooses to specify the location of an existing, FCC registered, tower structure located 11.4 kilometers southwest of the city of Desert Hot Springs. The allotment reference coordinates for Channel 295B1 at Desert Hot Springs, California, are 33° 55' 23" N.L. and 116° 36' 58" W.L.⁷ The Desert Hot Springs allotment reference site meets the allotment standards, the minimum spacing requirements of §73.207 and the city-grade coverage requirements of §73.315 of the FCC Rules.

Because the proposed KYOR(FM) Channel 295B1 allocation reference site is within 320 kilometers of the common border between Mexico and the United States of America, the proposal must satisfy the terms and conditions of the Mexican Agreement. The Desert Hot Springs reference site (Channel 295) satisfies the minimum distance separation requirements contained in Appendix A, Table 2, of the Agreement, with respect to all Mexican assignments, applications and allotments. The KYOR(FM), Yucca Valley, allotment (Channel 295) is currently a Class B FM allotment with respect to Mexico.

As shown in Exhibit 3, from the Desert Hot Springs reference site a full Class B1 facility produces a city-grade "circle" with a radius of 23.2 kilometers and covers 110 km²

⁷ This is an existing tower site (Tower Registration Number 1013322).

of the Palm Springs, California, Urbanized Area. According to U.S. Census data, the Palm Springs Urbanized area covers a total area of 233 km². Consequently, the proposed downgrade and relocation of KYOR(FM) will allow the proposed, Desert Hot Springs, Class B1 facility to cover 47.2% of the total Palm Springs Urbanized Area with a city-grade service circle from the proposed reference coordinates. Because the proposed reallocation would provide less than 50% city-grade coverage of the Palm Springs Urbanized Area, a Tuck analysis is not necessary.⁸

In light of the above, the Desert Hot Springs allotment reference site meets the applicable allotment standards and city-grade coverage requirements.

PUBLIC INTEREST BENEFITS

Considered together, the proposed arrangement of allotments will allow 2,430,101 persons to receive new primary service coverage from KLYY(FM), KSYY(FM) and KYOR(FM). In addition, a new first local service will be provided to Desert Hot Springs, California, from KYOR(FM). Although there are 2,843,612 persons in the KLYY(FM) and KSYY(FM) primary service loss area, both the KLYY(FM) and KSYY(FM) loss areas remain well served by 5 or more existing aural services.

⁸ See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 FCC 2d 33 (D.C. Cir. 1951), RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

The proposed reallocation, relocation and downgrade will allow KYOR(FM) to provide a first local service to Desert Hot Springs, California. As shown in Exhibit 4, a 614 km² gain area (containing a population of 104,040 persons) is associated with the proposed modification to KYOR(FM).

The overwhelming majority of the KYOR(FM) total loss area (the total KYOR(FM) loss area encompasses 7,621 km² and a population 67,062 persons) remains well served by five or more aural services. As illustrated in Exhibit 4, the proposed modification of KYOR(FM) will create five new gray areas where four aural services will remain. The total gray area created covers 481 km² and contains only 145 persons.⁹ No white areas will be created by the proposed arrangement of allotments.

Further, the proposed Channel 296B1 reference site improves on KLYY(FM)'s longstanding, grandfathered short-spacings with respect to second-adjacent channel stations KROQ-FM, Los Angeles, California, [Channel 294B] and KLVE(FM), Los Angeles, California [Channel 298B]. With respect to KROQ-FM, the existing 47.6 kilometer short-spacing is reduced to 27.6 km. Similarly, with respect to KLVE(FM), the existing 62.5 kilometer short-spacing is reduced to 41.8 km.

For the FM stations considered in the gain/loss studies, the primary service coverage is the maximum Class circles computed without considering terrain effects.¹⁰ If

⁹ In sum, such new gray areas are *de minimis*. See WSET, Incorporated, 80 FCC 2d 233, at paragraph 28 (1980) ("white" area loss sector containing approximately 500 persons is *de minimis*).

¹⁰ For the Class A, Class B and Class B1 FM stations considered herein, the primary service circles represented on the attached exhibit are the 60 dBu contour (28.3 km radius circle), the 54 dBu contour (65.0 km radius circle) and the 57 dBu contour (44.7 km radius circle), respectively. For AM stations, the daytime 0.5 mV/m groundwave primary service contour, predicted using the ground conductivities in FCC Figure M-3, are represented in Exhibit 4.

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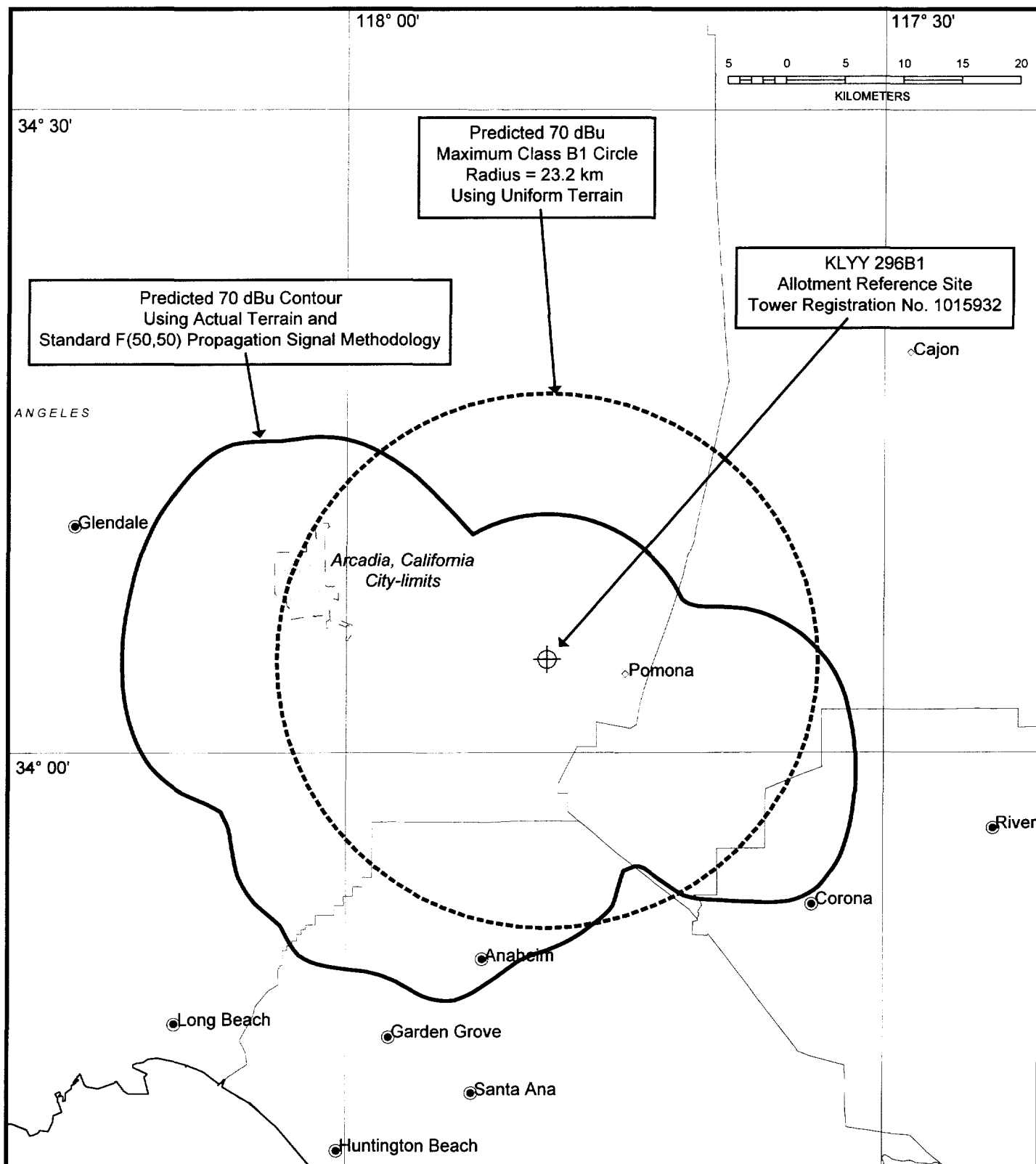
required by the *Notice of Proposed Rulemaking*, the Petitioner will provide detailed gain and loss area studies during the Comments stage of this proceeding.

This statement and the supporting exhibits were prepared by me or under my direct supervision and are believed to be true and correct.

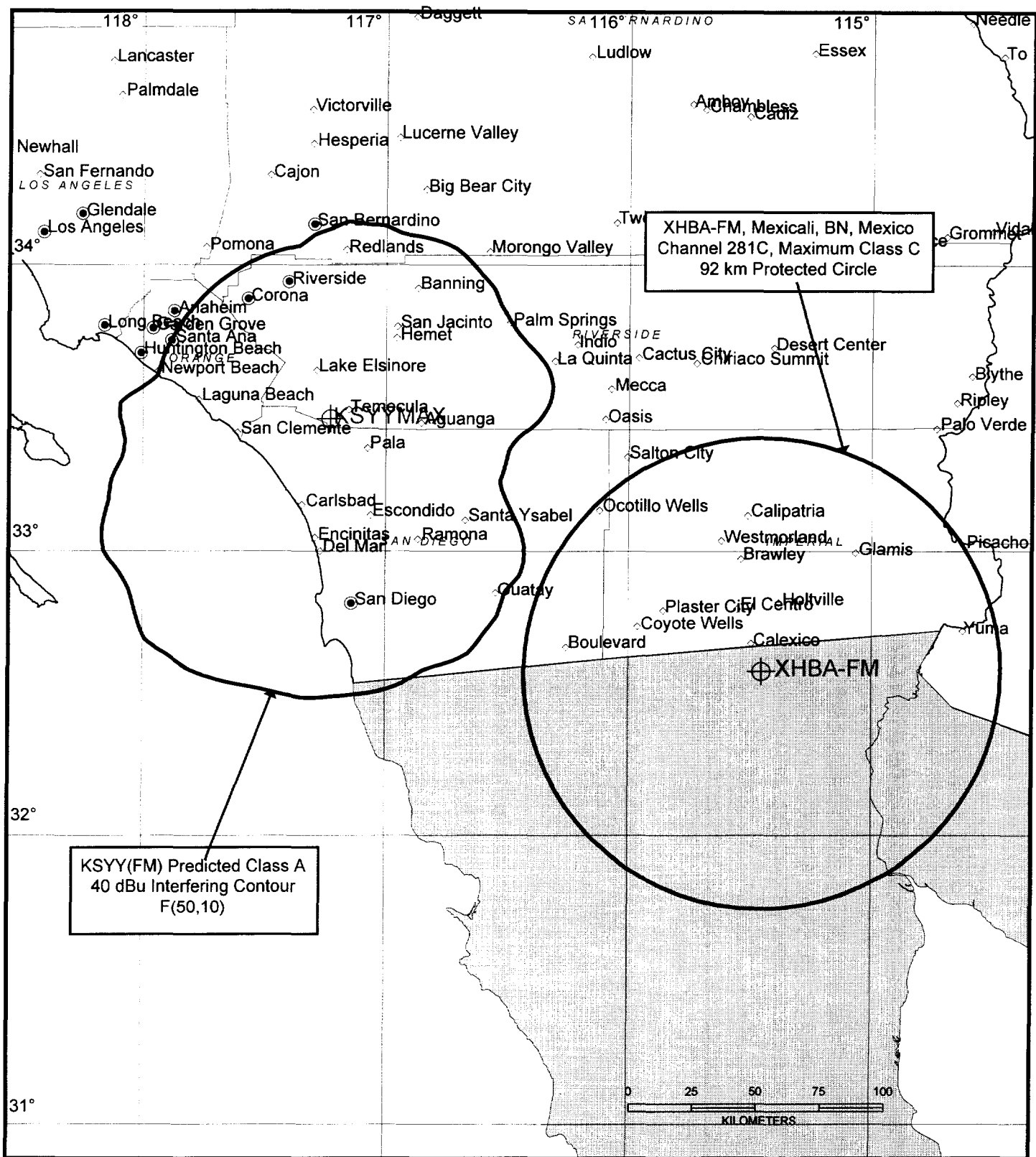
DATED: May 18, 2000



William J. Getz



PREDICTED CITY-GRADE COVERAGE
KLYY(FM), ARCADIA, CALIFORNIA
CH. 296B1, 25.0 kW ERP, 91 m HAAT
MAY, 2000

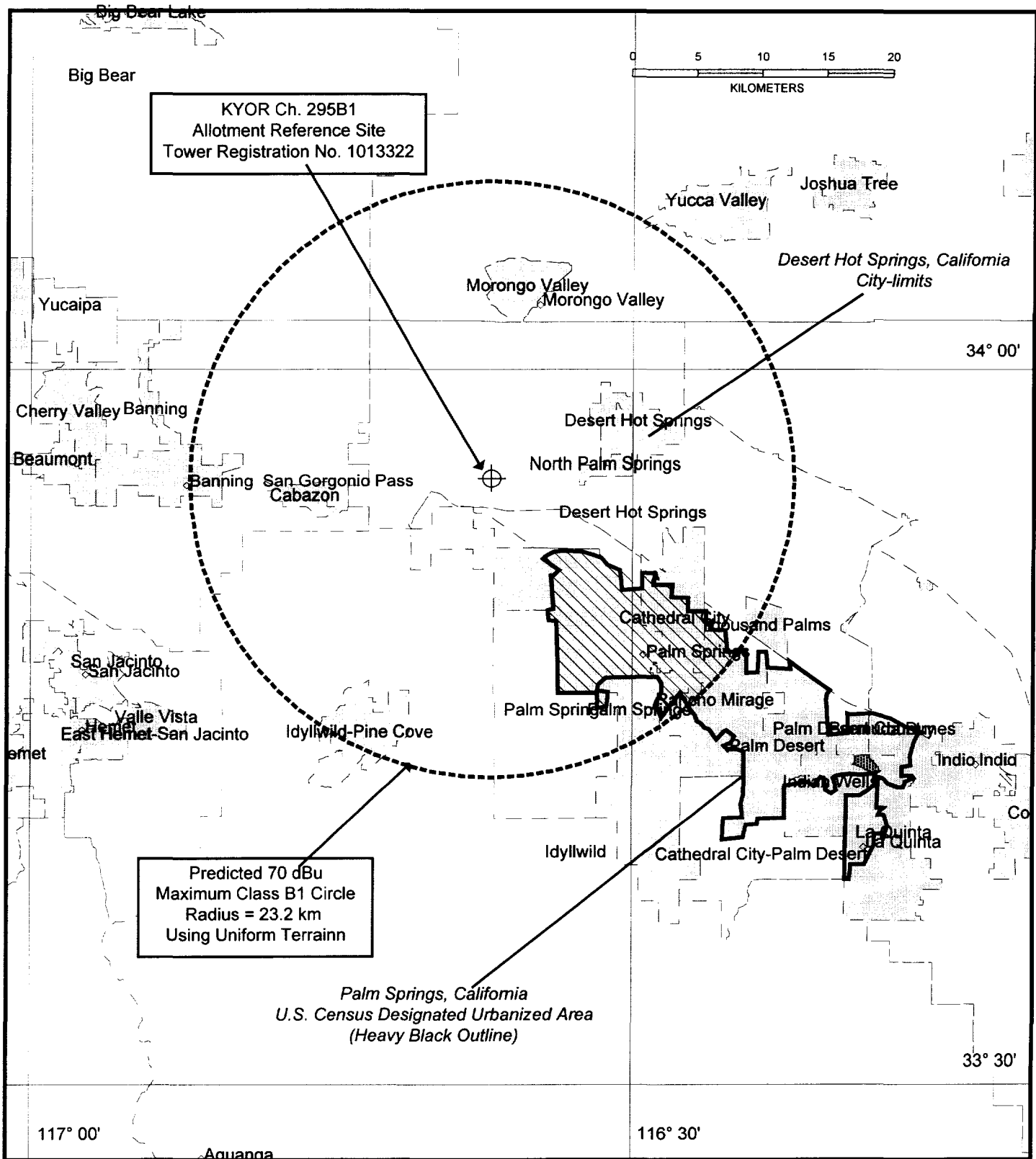


MEXICAN AGREEMENT COMPLIANCE
 KSYY(FM), FALLBROOK, CALIFORNIA
 CH. 281A, 6.0 kW ERP, 100 m HAAT
 MAY, 2000

Palm Springs Urbanized Area = 233 km²

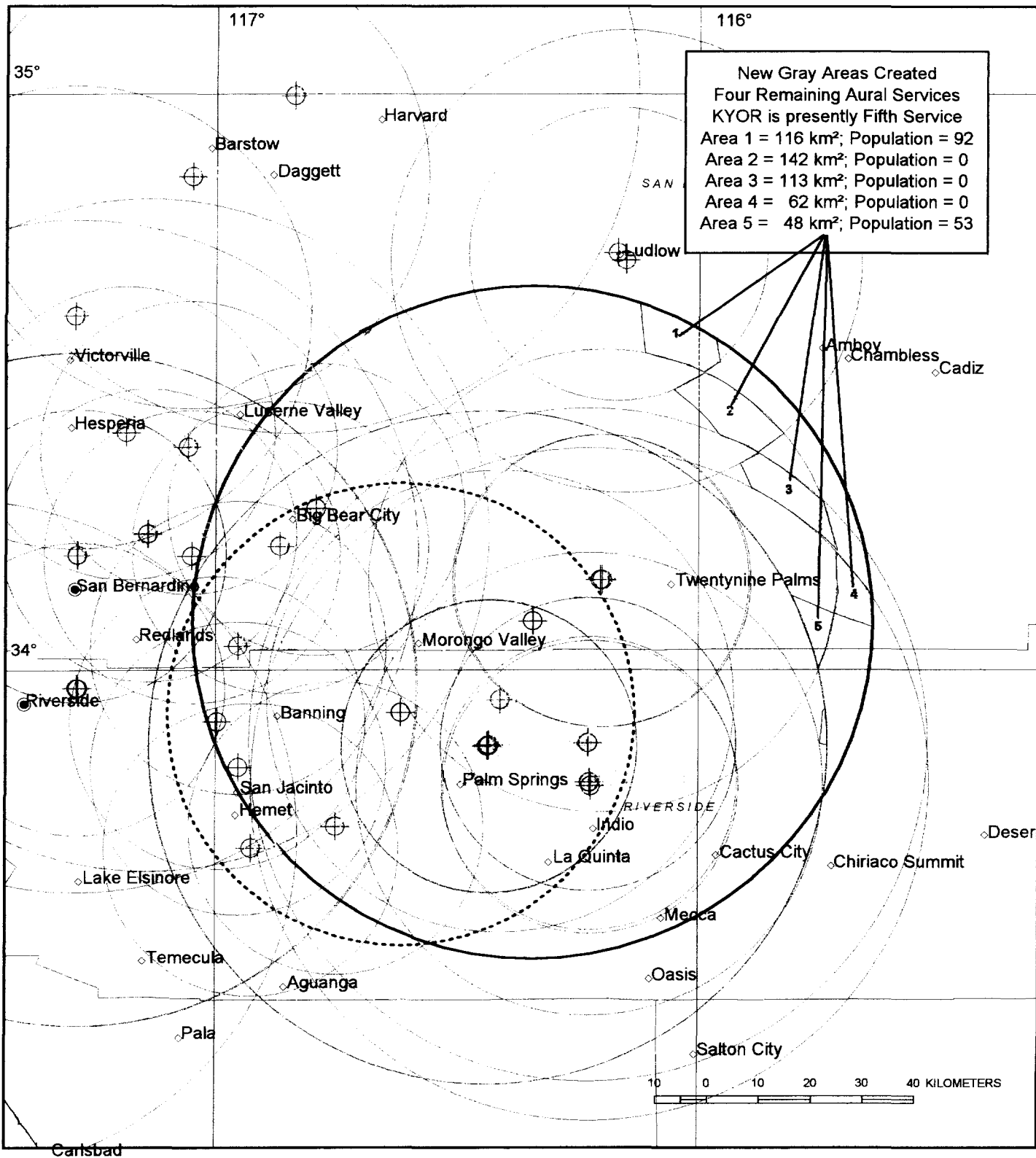
EXHIBIT 3

City-Grade Coverage of Palm Springs
Urbanized Area = 110 km² (47.2%)



PREDICTED CITY-GRADE COVERAGE
KYOR(FM), DESERT HOT SPRINGS, CALIFORNIA
CHANNEL 295B1
MAY, 2000

Yucca Valley Primary Service 54 dBu (Black Solid Circle radius = 65 km)
Desert Hot Springs Primary Service 57 dBu (Black Dashed Circle radius = 44.7 km)



FM Stations Primary Service (Green Circles)
AM Stations Daytime 0.5 mV/m Primary Service (Red Circles)

OTHER SERVICES TO KYOR LOSS AREA
YUCCA VALLEY, CALIFORNIA and
DESERT HOT SPRINGS, CALIFORNIA
MAY, 2000

CARL T. JONES
CORPORATION

**DISTANCE GIVEN FIELD STRENGTH STUDY
KLYY, ARCADIA, CALIFORNIA
CLASS B1 REFERENCE SITE
TOWARD ARCADIA, CALIFORNIA**

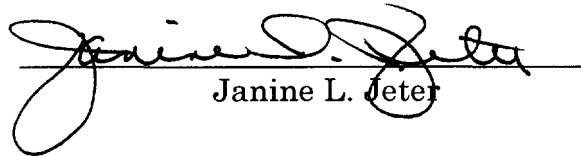
Proposed Radiation Centerline Height Above Mean Sea Level (meters)	410
Effective Radiated Power	25 kW
Direct Azimuth from Reference Site to Arcadia	290.4°
Distance from Reference Site to Arcadia	21.8 km

<u>Azimuth</u>	<u>Average Terrain Elevation (meters)</u>	<u>HAAT (meters)</u>	<u>City-Grade Contour Distance 70 dBu F(50,50) (kilometers)</u>
280	147	263	36.2
281	147	263	36.2
282	148	262	36.2
283	148	262	36.1
284	149	261	36.1
285	149	261	36.1
286	150	260	36.0
287	151	259	36.0
288	152	258	35.9
289	153	257	35.8
290	155	255	35.7
291	157	253	35.6
292	159	251	35.5
293	161	249	35.4
294	163	247	35.2
295	165	245	35.1
296	168	242	34.9
297	170	240	34.8
298	172	238	34.6
299	174	236	34.5
300	177	233	34.3

CERTIFICATE OF SERVICE

I, Janine L. Jeter, a legal secretary with the law firm of Hogan & Hartson L.L.P., hereby certify that on this 26th day of May, 2000, a copy of the foregoing Petition for Rulemaking has been served by first class mail to:

James R. Bayes, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel to Morris Communications Corporation


Janine L. Jeter